

DETAILED ACTION

This communication is a final rejection on the merits in response to remarks received on August 2nd 2011.

Interference

1. In traversing the rejection applied in the previous non-final rejection, the Applicant states the following in remarks dated August 2nd 2011:

"[A] rejection of the claims of the application (being examined) under 35 U.S.C. § 135(b)(2) should be made only if the application being examined was filed after the publication date of the reference." MPEP § 715.05. See also 35 U.S.C. § 135(b)(2) ("A claim which is the same as, or for the same or substantially the same subject matter as, a claim of an application published under section 122(b) of this title may be made in an application filed after the application is published only if the claim is made before 1 year after the date on which the application is published.") (emphasis added). The application being examined was filed August 9, 2007, several months prior to the publication of the cited reference on July 10, 2008. Thus, 35 U.S.C. § 135(b)(2) is inapplicable and cannot be used as a basis to reject the present claims. Applicant requests that the rejection be withdrawn.

While the Applicant's instant application was filed August 9th 2007, the *claims suggesting the interference* were filed May 25th 2011. The Examiner maintains that the of 35 U.S.C. 135(b)(2) rejection previously applied against Applicant's claims was indeed proper, and has reiterated such grounds in this final action on the merits.

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 135(b)(2) that form the basis for the rejections under this section made in this Office action:

(b)(2) A claim which is the same as, or for the same or substantially the same subject matter as, a claim of an application published under section 122(b) of this title may be made in an application filed after the application is published only if the claim is made before 1 year after the date on which the application is published.

3. Claims 41-51 are rejected under 35 U.S.C. 135(b)(2) as not being made prior to one year from the date on which application serial no. 11/668,124 (now U.S. Patent No. 7,975,594) was published. The aforementioned patent was published on July 10th, 2008, and the interference claims were submitted on May 25th, 2011. The claims filed prior to July 10, 2009 were very broad in nature and not for "substantially the same subject matter" as is now being claimed. See MPEP 2304.02(c) II. "Compliance with 35 U.S.C. 135(b)".

Conclusion

4. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to SAMIR ABDOSH whose telephone number is (571)270-5799. The examiner can normally be reached on Monday through Thursday 6:00 am to 4:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Carone can be reached on (571) 272-6873. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Michael J. Carone/
Supervisory Patent Examiner, Art Unit 3641

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